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1 City Ordinance clearly states that you are not allowed to
2 have them in the right-of-way. And as I testified earlier,
3 we are very lenient. The right-of-way on a lot of our
4 streets is very long. So we've come up with a policy years
5 ago. It is not in writing, sir.

6 Q. If I hand you the City Code, there is nothing in
7 writing on that; correct?

8 A. You're right.

9 THE COURT: I think he just established it's not
10 in writing.

11 BY MR. TUCKER:

12 Q. And regarding the zoning map that Mr. Rhodunda showed
13 you --

14 THE COURT: It's up here.

15 MR. TUCKER: Thank you.

16 BY MR. TUCKER:

17 Q. I'm putting it before you again, Mr. Ferrese. The
18 City official zoning map; correct?

19 A. Yes, sir.

20 Q. In the legend you referred to on direct by
21 Mr. Rhodunda, you referred to the zoning designations that
22 are in the legend; correct?

23 A. Yes.

24 Q. Is there also a reference in that legend to street
25 right-of-way lines?

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1 A. No.

2 Q. There is not?

3 A. I don't -- I don't recall.

4 Q. Take a look at it.

5 A. Can you show me where? I don't have my glasses. I'm
6 sorry.

7 Q. I'm sorry. Take your time.

8 THE COURT: I'm sorry. Do you need glasses to
9 be able to read that, sir?

10 THE WITNESS: Well, it says street right-of-way.
11 He's right. It's on there.

12 BY MR. TUCKER:

13 Q. Now, there is a designation for what a street
14 right-of-way is; correct? In that legend?

15 A. In the legend, yes, sir.

16 Q. Now, is that the zoning map that is available if any
17 citizen goes to the City to buy a map?

18 A. Yes.

19 Q. Okay. Can you tell the Court where on that entire
20 zoning map the City right-of-way is designated?

21 A. I don't think you are going to see that on a zoning
22 map, on this map.

23 Q. Is there another map that I can buy from the City
24 that would designate that for me?

25 A. No, but it spells it out in the City Code.

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1 Q. We'll get to that. Now, Mr. Ferrese, wouldn't you
2 agree that you could have a utility pole in the public
3 right-of-way that's located in the middle of the public
4 right-of-way?

5 A. Yes.

6 Q. Okay. So if you use the utility pole as your
7 measuring stick to insure you were removing signs only from
8 the public right-of-way, you may not be removing signs from
9 the public right-of-way if the utility pole is in the middle
10 of the public right-of-way; isn't that so?

11 A. No, we're removing it from the public right-of-way.

12 Q. Doesn't that create another area potentially that is
13 also public right-of-way that you are not removing any signs
14 from under your policy?

15 A. I don't understand your question, sir. I'm sorry.

16 Q. Okay. Let me try again. You have a public
17 right-of-way. Let's say it's 10 feet wide, hypothetically.
18 Okay?

19 A. Yes.

20 Q. There is a utility pole that is five feet into that
21 public right-of-way. It's possible; right?

22 A. Yes, it's possible.

23 Q. Probably not unlikely?

24 A. It's possible.

25 Q. Okay. Somebody puts their sign up behind the utility

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1 pole, okay? Maybe a foot behind it; right?

2 A. Yes.

3 Q. It's still in the public right-of-way?

4 A. Yes, sir.

5 Q. But you are not going to remove it?

6 A. Right.

7 Q. And unless somebody knows about your policy, if they
8 put a sign up on the other side of that utility pole, theirs
9 is going to get removed but somebody else's isn't?

10 A. That's right, sir.

11 Q. Even though they're both in the public right-of-way?

12 A. Yes, sir. It exists today.

13 Q. And when there is no utility pole and there is no
14 sidewalk, what does somebody do then?

15 A. Well, when there is no utility pole and no sidewalk,
16 usually the property line does come, the property line of
17 the owner comes to the street. But I said earlier that we
18 use the parking spaces as the right-of-way. Remember I told
19 you earlier the parking space, there is a landscaping tie or
20 whatever. That's the other side of the parking space and I
21 told you earlier we try to be as lenient as possible.

22 If we wanted to be stringent, Mr. Tucker, we
23 could go all the way back to the property line which would
24 be 30 feet from the sign, you would never see the sign, but
25 we're trying to be as cooperative as possible. All they

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1 have to do is if they could come in and talk to me about it.

2 Q. Mr. Ferrese, doesn't the police report, Plaintiffs'
3 Exhibit 5, note that Mr. Sokolove attempted to reach you but
4 couldn't reach you on 7/9? Isn't that mentioned in the
5 police report?

6 A. I don't know how he tried to reach me. Nobody called
7 my house, sir, and I have an answering machine. I leave
8 work at 12:00 o'clock and I go home. I have an answering
9 machine at my house. Nobody called my house, not a police
10 officer or Mr. Sokolove.

11 Q. Are you aware that when you were interviewed in that
12 police report you didn't dispute he tried to reach you?

13 A. To be honest with you, sir, I never read Cleveland's
14 police report and I never read O'Bier's investigative
15 report, sir. I never read it.

16 Q. Would it surprise you if I told you it's in the
17 report, that it specifically says my client, Mr. Sokolove
18 tried to reach you and you weren't available?

19 A. I'm available, sir. I have a phone.

20 Q. Now, Mr. Rhodunda also mentioned two letters that
21 were sent by Mr. Lawson regarding concerns over the City's
22 enforcement over this sign that you did not respond to;
23 correct?

24 A. I did not respond.

25 Q. And you said you had a discussion with the City

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1 Solicitor?

2 A. Yes.

3 Q. And the reason you said you didn't respond is because
4 you thought this was becoming litigious; correct?

5 A. Possibly.

6 Q. Did ask you the City Solicitor to write a letter
7 explaining the City's position on its unwritten policy so
8 this was clear?

9 A. No, I did not.

10 MR. TUCKER: I'm sorry, Your Honor. I'll get
11 through these pictures quickly.

12 THE COURT: Do you have any idea, Mr. Tucker,
13 how much longer you expect to be?

14 MR. TUCKER: Probably another ten minutes.

15 BY MR. TUCKER:

16 Q. Sir, I'm going to show you Plaintiffs' Exhibit 22
17 which is a picture of Second Street and Henlopen street,
18 picture 20 which is the Village Improvement Association sign
19 as well as Plaintiffs' 16 which is the City Convention
20 Center sign.

21 Now, Mr. Ferrese, on Plaintiffs' Exhibit 22, can
22 you tell us what that picture depicts?

23 A. That's a street sign designating Second Street and
24 Henlopen Avenue and there is an Art League informational
25 sign attached to it.

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1 Q. What is the Art League?

2 A. It's located in Henlopen Acres. It's not in the City
3 of Rehoboth Beach and people have to go through the City of
4 Rehoboth Beach to get to the Art League. I'm not a member.
5 I don't know what they do, to be honest with you,
6 Mr. Tucker.

7 Q. Are they a City organization?

8 A. No.

9 Q. And that is a City pole?

10 A. Yes.

11 Q. And that is located in the right-of-way; correct?

12 A. Yes, sir.

13 Q. Okay. Is that sign a violation of the City's Code?

14 A. No.

15 Q. Is that sign a violation of your policy?

16 A. No.

17 Q. Why not?

18 A. First of all, the sign was put up there before I
19 arrived 23 years ago. And it's a directional sign. It's a
20 nonprofit organization. It's in the City right-of-way and
21 we allow that sign only on that pole.

22 Q. Would you agree that your sign code says that no
23 private signs are allowed in the right-of-way? Can we agree
24 on that?

25 A. Yes.

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1 Q. Okay. Can you point me, in your code, to any
2 grandfather provision whatsoever of any kind in your zoning
3 code or your general municipal code that creates a
4 grandfathering provision for existing signs?

5 A. I don't have the code book but signs are
6 grandfathered, sir. I don't have the code book.

7 Q. Where is that provision at?

8 A. It's in the zoning code of the City of Rehoboth
9 Beach.

10 Q. Okay.

11 A. If a sign was put up prior to an ordinance being
12 adopted, it's grandfathered. I don't know when the Art
13 League signs went up. All I can testify is they were up
14 prior to my arrival. The Art League asked they be replaced
15 because the signs were rusty during my tenure and I allowed
16 the Art League to put new signs up and replace the old ones.

17 Q. And approximately how many of those signs exist
18 throughout the city, sir?

19 A. I have no idea.

20 Q. Would it surprise you if I said more than 50?

21 A. I have no idea.

22 MR. TUCKER: Your Honor, I believe the sign
23 code which is in the zoning code is in the record. And I
24 guess it will speak for itself with regard to the City
25 grandfathering provision.

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1 THE WITNESS: Can I add to that, Your Honor?

2 THE COURT: You've got to wait for questions and
3 then, of course, Mr. Rhodunda will have a chance to ask you
4 questions on redirect, Mr. Ferrese.

5 BY MR. TUCKER:

6 Q. Now you mentioned plot plans, sir, that the City gets
7 when people make applications throughout the city to do
8 certain development provisions; is that correct?

9 A. I don't recall that I mentioned it during my
10 testimony.

11 Q. Do you remember Mr. Rhodunda handing you a plot plan
12 that you asserted came from Mr. Sokolove's property when it
13 had been developed under a prior owner?

14 A. No, he didn't hand me that. I don't recall.

15 MR. TUCKER: I'm sorry, Your Honor. I thought
16 this had been marked.

17 Okay. I'm sorry. It was marked for
18 identification as Defendants' 2 For Identification but was
19 not moved into evidence.

20 THE COURT: This is what?

21 MR. TUCKER: This is a picture of a plot plan
22 that Mr. Rhodunda had been referring to earlier along Lake
23 Avenue.

24 THE COURT: Well, it will have to be marked as
25 something else for identification because Defense Exhibit 2

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1 is a stack of photographs.

2 MR. SCHILTZ: 26 or 27?

3 THE DEPUTY CLERK: 27.

4 THE COURT: I sincerely hope I'm not going to be
5 getting back into the property line aspect of this case.

6 MR. TUCKER: No, Your Honor.

7 THE COURT: Go ahead.

8 BY MR. TUCKER:

9 Q. Mr. Ferrese, do you recognize that document?

10 A. Yes.

11 Q. Do you remember Mr. Rhodunda asking you about that
12 document?

13 A. No.

14 Q. Okay. Are you familiar with what that document is?

15 A. To me, it just shows the property lines and lot
16 numbers.

17 Q. Do you have any knowledge as to whether or not the
18 City keeps those on record for properties throughout the
19 City?

20 A. The Building and Licensing Department does that.

21 Q. Do you know if any attempt was made to look at
22 documents such as those when deciding not to remove certain
23 signs that were questionable under your policy?

24 A. I'm not aware of any.

25 Q. Is there any policy related to that?

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1 A. Pardon me?

2 Q. Is there any policy related to checking public
3 records regarding your questionable signs?

4 A. You would have to ask the Building and Licensing,
5 sir.

6 Q. Are you not aware of any?

7 A. I'm not aware.

8 Q. Now, Mr. Ferrese, you also mentioned about using
9 parking spots in the absence of a parking lot or utility
10 pole as a benchmark to determine your right-of-way as an
11 inspector; correct?

12 A. Yes.

13 Q. Do either Mr. Murphy or Mr. Onizuk know that policy?

14 A. Mr. Murphy knows it and I'm sure he told Bob Walter
15 and Steve. They're both employees in the Building and
16 License Department.

17 Q. That parking spaces are used?

18 A. Yes.

19 Q. As a marker?

20 A. Yes. Or you said there isn't any utility poles, yes.

21 Q. Mr. Ferrese, would it surprise you if we learned that
22 for the first time about this policy yesterday during
23 depositions?

24 A. It would surprise me.

25 Q. It does surprise you?

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1 A. Yes, it would surprise me.

2 Q. If you or Mr. Speakman or somebody from the City had
3 written to our clients and explained this policy, do you
4 think maybe this could have been avoided today?

5 A. I think that once the signs were removed on Saturday,
6 July 9th, that if Mr. Sokolove would have contacted me
7 Monday morning and went over everything, yes, this could
8 have been resolved easily, but for one reason or another, it
9 did not occur.

10 Q. But you received letters from his attorney asking for
11 clarifications on these points; correct, sir?

12 A. I received letters asking for clarifications on the
13 points and also threatening letters of litigation.

14 Q. Doesn't the letter indicate, it's already in
15 evidence, that if they don't get a response it's only in
16 that case they would file something in court?

17 THE COURT: Okay. At this point, I
18 understand -- I think I understand where you are going with
19 this. And in fact, I'll be talking to both sides here in a
20 minute about sensible resolutions, but --

21 MR. TUCKER: I'll move on.

22 THE COURT: -- I think I have your point,
23 Mr. Tucker.

24 MR. TUCKER: I'll move on, Your Honor.

25 BY MR. TUCKER:

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1 Q. Mr. Ferrese, is it fair to say that if you are an
2 incumbent in the City, and you know about this unwritten
3 policy, you have an advantage when it comes to putting out
4 your signs?

5 A. That's not fair to say, sir. I've been here
6 23 years. This is the first time I've ever experienced
7 something like this. All the incumbents, if they feel they
8 put the sign in wrong location and it was removed, they
9 would move it back where it's supposed to be, sir. It's as
10 simple as that.

11 Q. You don't think this creates an unfair situation; is
12 that your testimony?

13 A. You asked me a question, I gave you an answer. I do
14 not.

15 MR. TUCKER: Thank you, Your Honor.

16 THE COURT: All right. Any redirect?

17 MR. RHODUNDA: May I have one moment, Your
18 Honor?

19 THE COURT: Sure.

20 (Pause.)

21 REDIRECT EXAMINATION

22 BY MR. RHODUNDA:

23 Q. Mr. Ferrese, I just have a few follow-up questions
24 for you. You were shown some pictures by the plaintiffs'
25 lawyers and you were asked questions about whether they

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1 constituted violations or not regarding Mayor signs; is that
2 correct?

3 A. Yes, sir.

4 Q. Were any complaints made to you about the locations
5 of those signs?

6 A. No.

7 Q. And those little signs, Art League, do they have an
8 arrow on them pointing the way to the Art league?

9 A. Yes, sir.

10 Q. Is Art League hard to find otherwise? Is it hard?

11 A. It's a nonprofit organization located in Henlopen
12 Acres, a bunch of artists. I don't know their function.

13 Q. And the Convention Center sign, does that have an
14 arrow on that that points to the Convention Center?

15 A. I can't recall. To be honest with you, there is a
16 Convention Center sign in front of City Hall designating the
17 Convention Center. It's on City property.

18 MR. RHODUNDA: I don't have any further
19 questions, Your Honor.

20 THE COURT: Okay. Mr. Ferrese, thank you. You
21 may step down, sir.

22 MR. RHODUNDA: Thank you, Your Honor.

23 MR. TUCKER: Just one follow-up.

24 THE COURT: No, we do direct-recross-redirect.

25 We're done.

1 Okay. Do we have any other witnesses?

2 MR. RHODUNDA: Your Honor, we do have Mr.
3 Onizuk, Mr. Murphy here. Now, they were deposed yesterday.
4 I'd be happy to provide the deposition support and just
5 argue based on what they were deposed on rather than calling
6 them as witnesses, unless the Court feels that their
7 enforcement of this ordinance is something the Court wants
8 to hear.

9 THE COURT: Mr. Schiltz?

10 MR. SCHILTZ: May I confer with my clients, Your
11 Honor?

12 THE COURT: Yes.

13 (Pause.)

14 MR. SCHILTZ: Your Honor, we have no objection
15 to supplementing the record by designations from the
16 testimony of Mr. Onizuk and Mr. Murphy.

17 THE COURT: All right. Fine. Thank you.

18 Then I take it on that basis, you rest?

19 MR. RHODUNDA: No, actually I want to move the
20 admission of our submission before the Court.

21 THE COURT: Move what?

22 MR. RHODUNDA: Move the affidavits that are that
23 attached to the memorandum in opposition to the plaintiffs'
24 motion. As Your Honor is aware, this has been a very
25 expedited matter. The plaintiffs certainly had at least a

1 week or two headstart on us. We were able to obtain some
2 affidavits.

3 THE COURT: From whom?

4 MR. RHODUNDA: I'm sorry?

5 THE COURT: Just identify the affidavit.

6 MR. RHODUNDA: Okay. The affidavits from
7 Richard Sargent, who is a current City Commissioner, we were
8 able to obtain that yesterday; from a Patrick Gossett that
9 we received yesterday, who is currently Commissioner for the
10 City; and also a former mayoral candidate, Charles Bahan.
11 And we were able to obtain that affidavit yesterday in
12 response to the claims raised in the plaintiffs' memorandum
13 and we would move their admission because they support the
14 consistent and ongoing enforcement of the sign ordinance in
15 the City. They actually speak to that in just very short
16 one-page affidavits going back over the last 10 years.

17 MR. SCHILTZ: Obviously, we don't have an
18 opportunity to cross-examine. They are hearsay and we
19 object.

20 THE COURT: All right. Well, I'll take it under
21 advisement. It's part of the court record already.

22 MR. SCHILTZ: It is, Your Honor, but I think you
23 understand my position.

24 THE COURT: Yes, I have your position. You're
25 objecting to it being part of the record of this hearing and

1 I've told you I'll take it under advisement.

2 Is there any other evidence you want to present?

3 MR. SPEAKMAN: Your Honor, we're having a
4 little trouble deciding whether we have one more witness,
5 depending, because that witness would go towards historical
6 enforcement of the ordinance question.

7 THE COURT: Well, if you have a witness here and
8 you want to put him on, put him on.

9 MR. SPEAKMAN: May we have another moment to
10 talk about that?

11 (Counsel confer.)

12 MR. RHODUNDA: Your Honor, we're resting.

13 THE COURT: All right. Is there any rebuttal
14 evidence you want to put on, on the plaintiffs' side,
15 Mr. Schiltz or Mr. Tucker?

16 MR. TUCKER: One moment, Your Honor.

17 (Pause.)

18 MR. SCHILTZ: No.

19 THE COURT: All right. Both sides then have
20 rested. The record is complete with the sole exception that
21 I have under advisement whether or not to make certain
22 affidavits or declarations part of the record.

23 Let's talk for a moment about getting your
24 positions before me, your legal positions before me.

25 I have the submissions that both sides have

1 made. Do you think you want or need some additional
2 opportunity to present to me either argument today, which
3 would have to be very brief, I have a 2:30 matter that I
4 need to address, or do you want to take the opportunity to
5 give me something in writing in light of the evidence that
6 was submitted today? Mr. Schiltz?

7 MR. SCHILTZ: Your Honor, from the plaintiffs'
8 position -- and I apologize. Did I understand that Your
9 Honor has an obligation at 2:30?

10 THE COURT: Yes.

11 MR. SCHILTZ: But there would be an opportunity
12 to come back after that to present oral argument? No, I'm
13 just trying to understand.

14 THE COURT: No.

15 MR. SCHILTZ: Your Honor, we're happy to proceed
16 with oral argument right now. We do not believe we need
17 additional legal submissions summarizing the facts.

18 THE COURT: There you go. That's what I'm
19 looking for. Thank you very much.

20 All right. Mr. Rhodunda or Mr. Speakman, the
21 same question to you. Are you prepared to proceed to
22 argument now and do you think you need to give me something
23 else in writing? I got what you sent in.

24 MR. RHODUNDA: Correct. We're ready to proceed
25 to argument, Your Honor.

1 THE COURT: Okay. Let's go ahead and have your
2 argument. And I apologize right now if, for any reason, we
3 don't go through this, I may require you to stay and we come
4 back after I have my 2:30 proceeding, but I'm hoping that we
5 can get through. We'll see. Go ahead.

6 MR. SCHILTZ: Your Honor, our application in our
7 oral argument we think is relatively short. It follows the
8 legal memorandum we submitted at the outset of the case.
9 There are two arguments that we're going to make. The first
10 is that the City Ordinance Section 74-16 is unconstitutional
11 on its face and, secondly, that it's been enforced in a
12 selective and discriminatory manner.

13 THE COURT: As to the first point, let's hit
14 that. You tell me, which is the one you think you pin most
15 of your hope on, if you had to rank them?

16 MR. SCHILTZ: Your Honor, I'll be honest. I
17 think the unconstitutional on its face argument is a very
18 strong argument. The other argument is very strong as well.
19 The only issue is whether or not there has been some record
20 created that might dispute whether it's been selectively
21 enforced.

22 THE COURT: Okay. As to the unconstitutional on
23 its face argument, your opponent cites me to City of Los
24 Angeles vs. Taxpayers for Vincent, where, for aesthetic
25 purposes, the City ordinance banning bills on poles was

1 upheld against a challenge that it was an infringement on
2 political speech. How does that precedent affect your
3 position that this is overbroad to say that you can't have
4 these political signs on public property?

5 MR. SCHILTZ: The answer, Your Honor, is every
6 constitutional analysis begins with looking at the statute
7 at issue. And the statute at issue in the Vincent case is
8 just different than the statute at issue in this case. The
9 statute at issue in the Vincent case prohibited across the
10 board anyone, including the government, from erecting signs
11 on public right-of-way. Here, the statute excepts the
12 Government from that prohibition.

13 We see it throughout the record, Your Honor.
14 You look at the most glaringly the 30-foot tall City of
15 Rehoboth Beach Convention Center sign. Is that a
16 directional sign, as our, my friends say? Even if it is,
17 first of all, I don't see a narrowly tailored exception in
18 74-16 which would prohibit that. But let's look at the it
19 for what it really is it's a commercial sign. You see on
20 it, it has an advertisement for "Oklahoma." Well, you will
21 hear from the deposition testimony that we would submit
22 that that was a private production that is put on by
23 private -- in the private enterprises that charges a fee
24 and earns money for that.

25 So we've got the City promoting commercial

1 speech on a sign. Now, query: Could the playhouse down the
2 street erect a 30-foot soon sign that says "Come See Yankee
3 Doodle Dandy?" I think they would claim that is prohibited
4 by 74-16. So we have a very different statute. The one in
5 Vincent prohibited across the board. City couldn't do it,
6 State couldn't do it, private individuals couldn't do it.
7 Here, that is not the case. The City, in fact, is exercised
8 its rights to go ahead and erect large signs.

9 THE COURT: Large signs?

10 MR. SCHILTZ: There are certainly the City of
11 Rehoboth sign, there is a "Welcome" sign as you come into
12 the town. You know, we hear this is -- I can show you that
13 although the record is closed. I can point you to a
14 lighthouse that sits in the circle. We hear this is about
15 aesthetics and maintaining the lovely Rehoboth Beach, yet
16 the City itself erects a 30-foot blinking sign on the
17 busiest commercial street in the City.

18 THE COURT: So the City's placing a sign on the
19 commercial thoroughfare you think is --

20 MR. SCHILTZ: It's an example of what is
21 permitted by the statute, and by permitting that, the
22 statute is unconstitutional because it treats certain
23 speakers, the Government, differently than other speakers,
24 anyone else.

25 And think about that, Your Honor. Why do we

1 have the First Amendment? We have the First Amendment to
2 prohibit the Government from silencing the populus and
3 allowing it to speak. Yet that is what the ordinance does.
4 It allows the Government to speak on any issue, Your Honor.
5 That is not limited. It can promote any activity that it
6 wants.

7 Look at the Supreme Court precedent. And, Your
8 Honor, the point there then -- and taking this to the next
9 step. That renders the statute content-based vs.
10 content-neutral. The difference between the plaintiffs'
11 submission on the law and mine is that they apply a
12 different test.

13 THE COURT: They sure do.

14 MR. SCHILTZ: They do. It's a time, place and
15 manner test. And that is what happens when there is a
16 content-neutral statute. When there is a content-based
17 statute, a much different standard applies. That is clear
18 from all the case law. I don't think anybody is going to
19 dispute that. And, frankly, Your Honor, that is probably
20 the most fundamental decision. Once your Court decides
21 that, I think the rest flows relatively easily.

22 When you are in a content-based application, you
23 have to show a compelling need, compelling justification.
24 I cited the Court, I believe it's the Whitton case from
25 the Eighth Circuit which said aesthetics and traffic isn't

1 compelling, never has been recognized as such. And then
2 you have to have it narrowly -- excuse me. It has to be
3 narrowly tailored. So it has to say: Well, we've got a
4 big ban. We're not going to have any ban but we're going
5 to allow this one little thing. We're going to allow
6 directional signs. A lot of statutes, including the
7 Delaware state statute that was at issue in the Rappa case
8 say that: Big ban, can't have it on this side of the roads,
9 but if you want to put up a directional sign because
10 obviously roads people need to be directed on roads, that
11 that is okay. It's narrowly tailored, serving the function
12 of the venue. That's not what we have here, Your Honor. We
13 have a blank check for the City.

14 THE COURT: Well, I'm sure that Mr. Rhodunda or
15 Mr. Speakman, of course, will be speaking for themselves but
16 I understand their position to be that what we're talking
17 about here is a permitted time, place and manner restriction
18 to meet an aesthetic end. And what you are saying is:
19 Don't even get that far because, since this is a restriction
20 only on private signs, doesn't restrict the Government, you
21 never get past that issue. By that very fact that it's
22 private sign only, I'm in noncontent-neutral space. Have I
23 understood you right?

24 MR. SCHILTZ: I believe because it
25 differentiates between speakers that this is a content-based

1 statute. Then you have to apply the contest-based test and
2 we don't think they meet the test.

3 THE COURT: And differentiating between speakers
4 is the Government and non-Government?

5 MR. SCHILTZ: Absolutely.

6 THE COURT: Okay. Fine. I got your argument.

7 MR. SCHILTZ: I will state, however, Your Honor,
8 even if you apply the plaintiffs' standard, one of the
9 fundamental components of that is narrowly tailoring the
10 relief, the exception; once again, the prohibition. And
11 again, this statute just doesn't have it. It's not narrowly
12 tailored on the front end. It prohibits everything. The
13 Supreme Court said that's okay. Now we have this exception.

14 Frankly, Your Honor, I don't think the time,
15 manner and place exception we ever get to, because if you
16 look at the Rappa case, it applied what I will call an
17 intermediate standard. And let me explain that to Your
18 Honor. That statute, as I said, had broad prohibition on
19 signs next to roadways and then it had a number of clearly
20 delineated exceptions. And there, the Supreme Court --
21 excuse me -- the Third Circuit said in situations like that,
22 there must be --

23 THE COURT: Give me a page cite.

24 MR. SCHILTZ: Your Honor, it's not it easiest
25 think to articulate but it's at page 1065, Your Honor.

1 THE COURT: Okay. I have it in front of me.
2 What language do you want to point me to?

3 MR. SCHILTZ: Right at footnote six.

4 THE COURT: Footnote 36?

5 MR. SCHILTZ: Six. No, I'm sorry. Headnote
6 six, at the top of the page.

7 THE COURT: All right.

8 MR. SCHILTZ: This is dealing with a situation
9 where there is a general ban and an exception of certain
10 narrowly tailored speech. The court said: There must be a
11 significant relationship between the speech that is being
12 permitted and the location that is being regulated. It must
13 be clear that the State didn't make this distinction in an
14 attempt to sensor viewpoints or control what issues are
15 appropriate for public debate.

16 There is no evidence on that issue here, Your
17 Honor.

18 And it goes on to say: The exception is
19 substantially related to advancing an important State
20 interest that it at least as important as the interest
21 advanced by the ban. And then, importantly, the exception
22 is no broader than necessary to advance the special goal;
23 the exception, the goal that is being recognized in the
24 exception; and that the exception is narrowly drawn so as to
25 impinge as little as possible on the overall goal.

1 I just don't see that statute meeting this test.
2 And if you are not going to look at this as contest-based as
3 we think you should, at the very least the Rappa test
4 applies. And, frankly, we don't think it survives that
5 either.

6 THE COURT: All right.

7 MR. SCHILTZ: I'll move on.

8 The second argument we have is the statute has
9 been applied in a discriminatory record. And I want to
10 break the record down into areas. The first will be what I
11 term essentially commercial speech and the second is the
12 campaign sign issue.

13 We have heard a lot about where the campaign
14 signs are, whose signs were removed, whose weren't, but the
15 record is clear, Your Honor, that there is a multitude of
16 commercial signs in the public right-of-way which are never
17 touched. I'll direct the Court's attention to the
18 Village -- I forget.

19 MR. SPEAKMAN: The Village Improvement
20 Association.

21 MR. SCHILTZ: Thank you, sir.

22 (Continuing): -- the Village Improvement
23 Association sign. The only evidence is that it's located on
24 City property. It's clearly advocating this association.
25 Let's talk about the 50 Art League signs. Let's talk about

1 the trailer park sign, a foot off the road. I just don't
2 see that there has been any consistent enforcement with
3 respect to those signs. So they let all of those go. But
4 we're going to remove the political signs. That is not
5 appropriate.

6 Now, Your Honor has heard a lot of evidence on
7 the last issue, that is, selective enforcement vis-a-vis the
8 campaign signs. Now, frankly, I think there is clear
9 evidence that the plaintiffs were advised ahead of time that
10 they could erect signs in the public right-of-way. They
11 relied on that advice and they went out and erected their
12 signs. Then they see their signs are removed from both
13 private placements as well as public right-of-ways while
14 other signs remain in the identical property, Your Honor.

15 Now, that seems troublesome but it's almost not
16 surprising, given the fact that the City has adopted a
17 completely arbitrary standard for enforcing its ordinance.
18 The ordinance precludes private parties from erecting signs
19 in public right-of-ways. It has to be enforced, Your Honor,
20 consistently.

21 We heard Mr. Ferrese say we don't enforce it.
22 If it's a 10-foot wide swatch and the pole is five feet
23 right in the middle of it and there is a sign right behind
24 it, we look the other way. And they look the other way
25 repeatedly here, Your Honor, to the detriment of my client

1 and in favor of the incumbents.

2 Now, instead of looking to the record, to the
3 records in their offices and figuring out where the
4 right-of-way is with respect to all these properties, they
5 employ this rule of thumb that says, well, if it's between
6 the curb and the far side of the sidewalk that it's done,
7 that's no good. If it's closer to the road than the utility
8 pole, that's no good either. Then if there is neither of
9 those, frankly, Your Honor, we just let it go. And that
10 testimony comes from the deposition, Your Honor.

11 THE COURT: Which deposition?

12 MR. SCHILTZ: I'll read it to Your Honor.

13 THE COURT: Well, you can read it to me if it's
14 the deposition of one of these folks.

15 MR. SCHILTZ: It is.

16 THE COURT: Okay.

17 MR. SCHILTZ: It's the deposition of Mr. Onizuk.

18 THE COURT: Okay.

19 MR. SCHILTZ: And I apologize, I don't have the
20 final court version of this, but I can submit later a --

21 THE COURT: That's all right. Go ahead and put
22 it into the record. If Mr. Rhodunda or Mr. Speakman have a
23 problem, I'm sure they'll tell me.

24 MR. RHODUNDA: Not the entire transcript into
25 the record.

1 MR. SCHILTZ: I've got it, Your Honor. It's on
2 page 69, line 14 of this transcript that I've got. And this
3 is Mr. Tucker.

4 "Question: Let me ask the question. It is
5 important. What do you do in that instance? What do you do
6 in an instance where there is a street, there is no utility
7 poles, and no sidewalk?

8 "Answer: Then I would say I'm going to leave
9 those signs alone. They might be on somebody's private
10 property.

11 "Question: You would not remove those signs?

12 "Answer: I would not remove them. If I have
13 any doubt, I won't touch them."

14 THE COURT: All right.

15 MR. SCHILTZ: So they're not looking to
16 determine whether or not it's in the public right-of-way.
17 They've adopted a scheme that nobody knew about, that we
18 asked repeatedly about to try to find some information
19 about. We weren't told. The incumbents knew it so they
20 knew how to put up their signs so they're not taken down.

21 Your Honor, I just think collectively as a
22 whole, if you look at all those actions, it clearly shows
23 that this statute has been applied in an entirely selective
24 and arbitrary manner, vis-a-vis my client's political signs.

25 THE COURT: All right.

1 MR. SCHILTZ: And I'll only touch on it. I
2 don't think -- I'll say this: There are other elements that
3 were required to be met in connection with the preliminary
4 injunction application. I believe there really is no
5 material dispute that if we prevail on the likelihood of
6 success of the merits prong that the others flow therefrom.
7 But if I'm incorrect, Mr. Rhodunda will correct me.

8 THE COURT: And you will have a chance for
9 rebuttal.

10 MR. SCHILTZ: Thank you.

11 THE COURT: All right. Mr. Rhodunda.

12 MR. RHODUNDA: Thank you, Your Honor.

13 I think unfortunately this case is a product the
14 heightened emotions associated with a political campaign.
15 It is not a constitutional issue. The plaintiffs can't
16 escape that this is the City. They can't escape it. It's
17 the same type of ordinance that if you read the case
18 carefully, you will see certain governmental signs in the
19 Vincent case particularly cited in the decision are street
20 signs, are traffic signs. So clearly Vincent, you can't
21 think the City of Los Angeles does not have Governmental
22 directional informational signs within the City of Los
23 Angeles.

24 THE COURT: Let's get specific here. The
25 assertion by your opponent that you need to speak to, to

1 meet head on, is that the ordinance at issue in the Vincent
2 case, Section 28-04 of the Los Angeles Municipal Code which
3 is quoted right at the start of the opinion, does not limit
4 itself to private parties but evidently, as the plaintiffs
5 read it, prohibits anybody from posting information.
6 That's the assertion. And that what makes these cases
7 fundamentally different is the Government is excepted and it
8 gets to post in public rights-of-ways and that private
9 parties don't. Speak to that issue if you would, please.
10 Does that distinction that they draw hold water? If not,
11 why not?

12 MR. RHODUNDA: It doesn't hold water. There is
13 no doubt this is a content-neutral ordinance. It should be
14 appropriately considered as content-neutral. The plaintiffs
15 have not identified any case law that indicates that a
16 Government set aside from private individual or private
17 corporations establishes a different party of interest. The
18 Government signs that they have identified here are the
19 types of signs any Government is going to have with
20 directional or informational signs for Government. And I
21 believe the courts have indicated repeatedly that is the
22 case, that they are constitutional and permitted signs.

23 The Rappa case actually strongly supports our
24 position because in the Rappa case, they have a broader
25 ordinance that prohibits signs. I think they have up to 10

1 exceptions. The Third Circuit threw out that ordinance
2 based on one of the 10 exceptions. But what is interesting,
3 and we cited it regularly throughout our filing, is that all
4 the types of signs that Government typically put up are
5 constitutionally-permitted signs.

6 MR. RHODUNDA: There is also another case that I
7 think is right on point for us.

8 THE COURT: Well, let me ask you a question
9 about; again, trying to get you to meet the argument made by
10 your opponent; the assertion is made that you, the City of
11 Rehoboth, have gone beyond directional signs. That you have
12 a big commercial sign advertising commercial activity. That
13 you have a series of signs, up to 50, that benefit a
14 particular organization by highlighting them and pointing
15 the way to their location. That's the claim that is made to
16 me, the assertion that is made. Do those facts make a
17 difference?

18 MR. RHODUNDA: No, Your Honor, because I relate
19 these signs that you have just mentioned more to like "don't
20 swim in Lake Gerar" signs. Presumably, it's a government
21 sign, it goes to a government issue of safety by not
22 swimming in the lake. For whatever reason, they don't want
23 people swimming in the lake. They actually identified that
24 picture as a photograph that is a government sign in Lake
25 Gerar that they find apparently in violation of the statute.

1 THE COURT: Okay. Are you saying that it's
2 unsafe to swim sign is equivalent to an advertisement for a
3 commercial activity?

4 MR. RHODUNDA: I think in the case of the
5 Convention Center sign, there is an arrow on the sign that
6 points to the convention center. I think the government
7 certainly has a substantial interest, I believe the Supreme
8 Court has previously indicated that, in helping citizens
9 know where government buildings are and how to get to them.

10 THE COURT: How about, I take it there is an
11 electronic billboard that is part of that sign?

12 MR. RHODUNDA: Look, there is one and there are
13 different events. I'm sure there are government events and
14 non-government events, but it's a government building. The
15 government benefits from renting that space in the event
16 there is a show or function there but also the government
17 benefits by bringing people into the town by coming and
18 attending these events.

19 THE COURT: And that's the point I'm trying to
20 get you to answer. I hear you telling me that it's
21 content-neutral, but the assertion being pressed on me by
22 your opponent is why does the government get to tell people
23 about the play Oklahoma on public property and we don't get
24 to tell citizens, Vote For Mr. Sokolove. So when you say,
25 oh, it's content-neutral, I need you to address specifically

1 that assertion, if you can.

2 MR. RHODUNDA: Well, in regard to looking at the
3 Rappa case, they talk about signs being typically related to
4 the property being constitutionally permissible signs.
5 Putting a Convention Center sign right directly across from
6 a Convention Center we believe is a permissible activity
7 because it's just simply identifying a government building.

8 Now, there may be other activities that take
9 place there but the government, citizens of Rehoboth really
10 benefit from any activities that take place at the
11 convention center.

12 THE COURT: Okay. Let's take it for the sake of
13 argument that I agree with you. All right? And that I'm
14 looking not at the more stringent test that the plaintiffs
15 press on me but at the Rappa test. Okay?

16 What am I to make of the assertion in the record
17 before me that there was no way to know whether your sign
18 was going to get yanked or not because sometimes they were,
19 sometimes they weren't. I mean there is a rule of thumb but
20 who knows whose thumb and when it was going to be placed on
21 the scale. That's the next argument I hear from your
22 opponents. What is your response to that?

23 MR. RHODUNDA: I did think there was a
24 communication problem. I think there were too many lawyers
25 involved in this matter. The letters that went to the City

1 were on the attack. They weren't saying, "please tell us
2 where can we put our signs." It's "we're going to sue you."
3 It went on and on and on. "The Rappa case applies." There
4 was no dialogue.

5 Regardless of who is at fault, at the moment,
6 speaking candidly to the Court, they've been able to get
7 along, the politicians, for the last ten years. We
8 submitted affidavits talking about the knowledge people had.
9 Even the plaintiffs' witness who testified no, we didn't
10 have signs in parks and we may have had them up the day
11 before on a City right-of-way, but he didn't have his signs
12 on public property.

13 THE COURT: That's not what I heard him say. I
14 heard him say, Mr. Rhodunda, that he did have his signs on
15 public property and that he had them on public property well
16 before the first day of the election.

17 MR. RHODUNDA: Well, he had some, but I think he
18 focused on the end of the streets the day before election,
19 but he never had them on a park, he never had them in the
20 library, he never had them on City Hall. So he is
21 potentially arguing or stating that he had them in the
22 right-of-way between the sidewalk and the curb.

23 THE COURT: That's kind of like --

24 MR. RHODUNDA: That is where he had them.

25 THE COURT: And if that is the case, again,

1 assume for the sake of argument, you don't have to -- I mean
2 you can, and I take it you do, challenge it. But assume I
3 were to accept that testimony, that historically, either by
4 way of the rule of thumb or some other way, signs have been
5 going up on what is technically public right-of-way. Does
6 the decision to start enforcing this year --

7 MR. RHODUNDA: I'm sorry?

8 THE COURT: Does the decision to start
9 enforcement, if I were to accept that testimony as truthful
10 and accurate, then I would say, well, they decided to start
11 enforcing this year. Does that make a difference
12 constitutionally, looking back?

13 MR. RHODUNDA: I think it goes back for many
14 years, the same policy has been in effect. The affidavits
15 we supplied support that. Mr. Ferrese's long term tenure
16 with the City support that, that they have been regularly
17 enforced.

18 They had a lawyer research the issue and the
19 lawyer didn't find the prohibition on putting signs on
20 public property. It really does not make logical sense,
21 Mr. Ferrese says you can put signs anywhere up on the City
22 when they never have been historically placed in parks and
23 median strips, let's say Rehoboth Avenue.

24 I think the biggest issue between the parties
25 is related to the front of residential properties. As we

1 saw in the zoning map, a good 80-to-90 percent of the
2 property in Rehoboth is probably privately owned commercial
3 or residential property. The question is can you place a
4 sign in there? Our argument is you can place a sign in
5 front of or on any of those private properties. On that
6 map, there really aren't a wide range of areas that would be
7 considered public property.

8 Now, there is a right-of-way in front of the
9 residents. The City has a reasonable approach to that and
10 it's been a reasonable approach that the past candidates for
11 office have been able to comply with. And I do think it's a
12 matter of three feet that we stop going through the whole
13 process of showing the photographs because I think the Court
14 appropriately redirected us as to what evidence should be
15 presented today.

16 But the issue before the Court, sadly to say, in
17 these cases is you can't put it between the sidewalk and the
18 curb; but if you have it on the other side of the sidewalk,
19 you're okay. And our position is in our affidavit or
20 deposition testimony from the people who took the signs down
21 is that is where the signs were.

22 There is a little bit of a question mark when it
23 comes to the telephone poles, but I think the testimony was
24 pretty consistent that if you're behind the telephone poles,
25 which are usually right at the right-of-way edge, we will

1 not take these signs. And that allows you to put a sign, as
2 you can see from some of the photographs, two or three feet
3 from the roadway. So this ordinance does not prohibit
4 significant areas of signage for these candidates would like
5 to place out. There is, 80-90 percent of the Rehoboth could
6 have a sign that says Sokolove For Mayor.

7 THE COURT: Okay.

8 MR. RHODUNDA: I think it's a significant
9 factor.

10 THE COURT: Is there anything else you want to
11 tell me about this, Mr. Rhodunda?

12 MR. RHODUNDA: Only that in Frumer vs.
13 Cheltenham Township, a Third Circuit case, the Court
14 analyzed a similar statute and they found that that statute
15 was actually narrowly tailored to serve the government's
16 needs regarding signs and there was a complete prohibition
17 of signs there. So we don't believe that narrowly tailored
18 or the highest standard applies. We do think it's
19 content-neutral and we have to show reasonable time, place
20 or manner of restrictions. But in light of all the
21 opportunities for candidates to place signs, just political
22 signs themselves on private property, that that is
23 reasonable.

24 And that there are also many other
25 opportunities. We deposed the plaintiffs about all the

1 other ways they advertise. There are 1,300 registered
2 voters in Rehoboth. They've all mailed out multiple letters
3 to all registered voters. The question is were we somehow
4 stopping them from putting the word out on their candidacy?
5 The City provided for their own testimony yesterday.

6 THE COURT: I don't even hear them arguing
7 here today that all speech is shut off by this. I hear
8 them arguing two things: facially invalid; and even if
9 not facially invalid in application, indefinite and
10 discriminatory. Those are the arguments. So I think we're
11 okay on the points you just raised.

12 Now, your opponent, at the very last moment when
13 he was standing up here, said: Hey, this case is really
14 about likelihood of success on the merits at this point
15 because the City is not disputing that if the Court were to
16 find plaintiffs had a likelihood of success that the other
17 three factors for preliminary injunction would be met.
18 That is, irreparable injury; and the City would not suffer
19 irreparable injury if an injunctive order were granted;
20 and public interest favored the plaintiff. That is the
21 plaintiffs' assertion. What is your take, among those other
22 aspects of preliminary injunctive relief?

23 MR. RHODUNDA: Certainly. We believe they
24 cannot proceed on success on the merits, but with regard to
25 irreparable harm to the plaintiffs if the preliminary

1 injunction is ordered, we do believe that there would be
2 harm to the City of Rehoboth. This has been a long standing
3 policy. We have provided affidavits that show that this has
4 been an ongoing practice in a limitation on signs, and if
5 this Court were to grant this motion, that certainly would
6 change the long-standing practice. It may go more directly
7 to the public interest, but the public interest is that
8 legislature in the City of Rehoboth passed an ordinance.
9 That ordinance says no signs on public property.

10 THE COURT: No, it says no private signs on
11 public property. That is their point.

12 MR. RHODUNDA: I understand that, but I don't
13 think that they found a case that just says because a
14 government allows certain signs that that, all of a sudden,
15 makes that some heightened standard.

16 THE COURT: Okay. Thank you very much,
17 Mr. Rhodunda.

18 I've got 120 seconds for you.

19 MR. SCHILTZ: Mr. Rhodunda made a few points. I
20 want to speak just briefly about the Vincent case. He said,
21 well, that permitted directional signs, and it was
22 content-neutral. And that is not correct, Your Honor. The
23 statute at issue there was regulating posting of signs on
24 utility poles. It had nothing to do with whether or not you
25 could put directional signs anywhere.

1 And then the argument seemed to be that, well,
2 directional signs have been constitutionally upheld on
3 numerous occasions. I agree there are several cases that
4 hold that but it all comes down to the context of the
5 statute. The statute says everything is banned but this
6 narrow exception is allowed. We don't have that here,
7 again. And they want to use their practice over the years
8 as they say to show, well, this is how we're enforcing it or
9 how it's been applied or this is the status of the facts and
10 therefore the statute itself is constitutional. And that is
11 putting the cart before the horse. You've got to look at
12 the statute.

13 The other point, that they jab us for putting to
14 a no swimming sign. Well, Plaintiffs' Exhibit 23 has a no
15 swimming sign on it, Your Honor, but it also has a Tree
16 City, USA -- a sign that one of the deponents, who is going
17 to be submitted through his deposition, said: Oh, I assume
18 they put that out there to, you know, let people know that
19 that is in there. That's something that they support and
20 that they'll garner support from the populus by posting Tree
21 City, USA signs. So once again, we have government trying
22 to sway the minds and thoughts of the public.

23 Mr. Rhodunda said Mr. Cargnino didn't review the
24 Code. I think she testified just the opposite.

25 The basic point here, Your Honor, is that the

1 defendants aren't applying the statute as written in any
2 manner. Your Honor pointed that out. I don't think they
3 had a good response.

4 Mr. Rhodunda then finally ended up by saying if
5 an injunction were to issue and there were a likelihood of
6 success that there would be harm to the City. The standard
7 how it is irreparable harm. The fact the City has to change
8 its policy doesn't cause it irreparable harm. If that were
9 the case, then no injunction could ever issue in a case like
10 this, Your Honor, because obviously that happens when an
11 injunction is enforced.

12 THE COURT: All right. I have your positions.
13 Thanks.

14 Now, before I leave the bench, I want to know if
15 anybody has done anything to speak to each other.

16 You don't need to be standing up for this. Go
17 ahead and sit down, Mr. Schiltz.

18 You have an election coming up pretty darn
19 quick; right? That is why you guys are saying: Hey, judge,
20 drop everything else so that the voters of Rehoboth have the
21 benefit of a fair and open election; which I'm taking very
22 seriously, which is why we're all here and have spent the
23 better part of the day. And I will spend a lot more time on
24 it, too, obviously, because I've got to go back and take a
25 look at your arguments and stuff.

1 But the practical issue of getting signs put up,
2 I'm assuming that you folks can speak to each other. Am I
3 right? I mean is there something that prevents the parties,
4 with or without their lawyers, from sitting down and talking
5 about what is and isn't going to be acceptable in the City's
6 view at this time? Am I missing something here? I'm just
7 trying to keep an eye on practicality.

8 And the reason I raise it is I get the sense is
9 this never happened. And I get this sort of who-struck-John
10 stuff about, well, I tried to call. He didn't call me back.
11 Well, they never got in touch with me. The only letters I
12 got were threatening. Moving past all that, do people have
13 signs up now in a way that they're comfortable with? Has
14 there been discussion about that? And if not, what is to
15 prevent you folks from sitting down and talking about that?

16 Mr. Schiltz, I'll give you the first crack
17 at it.

18 MR. SCHILTZ: Yes, Your Honor. First of all,
19 we do have signs up. They are certainly not up in the
20 locations that we would prefer them to be and believe
21 we're entitled to erect them.

22 THE COURT: All right. And have you talked
23 about that with the other side?

24 MR. SCHILTZ: We have talked about that issue,
25 Your Honor, before we filed the lawsuit. We made a couple

1 phone calls. I mean this is a who-struck-John issue.

2 THE COURT: Yes, and go ahead and stand up. If
3 you going to address the Court, you have to be proper.

4 MR. SCHILTZ: I apologize.

5 THE COURT: I'm not asking to go back over all
6 of that. I'm asking whether people have talked since --

7 MR. SCHILTZ: The effort was made after the
8 lawsuit was filed. The problem becomes the train has left
9 the station to some degree once the lawsuit is filed, a fact
10 we told the defendants before we filed.

11 THE COURT: All right. I fundamentally disagree
12 with that. This train has not left the station. You folks
13 can talk to each other, and should.

14 MR. SCHILTZ: I don't mean to suggest we
15 haven't. We have. The problem is what becomes an
16 acceptable resolution becomes much more difficult once we
17 file the lawsuit is filed.

18 THE COURT: All right.

19 MR. SCHILTZ: I do think it's worthwhile for the
20 parties to talk and say: Is this one okay? Is that one not
21 okay? I don't think anybody would object to that. We
22 certainly wouldn't. But that doesn't address the issue of
23 what we really think, which is we're being prohibited from
24 erecting them in places we think we should be able to.

25 THE COURT: All right. Mr. Rhodunda.

1 MR. RHODUNDA: We have gone over the photographs
2 the last couple days over what has been traditional and
3 acceptable sign locations. We're certainly happy to have
4 that dialogue with them on that. The reason why things
5 broke down when we started discussing it was -- and I know
6 this sound like a very minor point, but there is one clear
7 area where signs aren't permitted is between the sidewalk
8 and the curb. And that's a public right-of-way area. They
9 even agree with that.

10 But the question is whether or not we get past
11 the stumbling blocks. I mean we should have a dialogue on
12 where we think the signs can go. But the unfortunately the
13 City can't say we can put them in the public right-of-way
14 as a part of trying to resolve it, but maybe we can talk
15 about pictures and locations. I think as I previously
16 stated, we're talking about two or three feet is what we're
17 talking about here, and that is a little bit unfortunate.

18 THE COURT: All right. If you haven't been
19 talking, you ought to start talking, because it obviously
20 going to take me -- I'm not going to rule from the bench.
21 And so you are going to wait to get something from me in
22 writing, and I'll try to get that to you forthwith. But in
23 an election season as short as this one clearly is, every
24 day obviously is important, not just to the candidates but
25 to the people.

1 These are important things, free elections, so
2 you should be speaking to each other. And you should be
3 working out to the fullest extent possible. At the end of
4 the day, what ought to happen is we ought to end up with
5 signs pretty much where everybody agrees it makes sense to
6 have signs. And if we still have a problem, then the
7 problem is one of, if the statute or ordinance isn't
8 appropriate, is one of tightening up and clarifying and
9 fixing an ordinance that hasn't been what it ought to be,
10 perhaps. But I hate to see an election where people are
11 off on a side line, side tangent from what the issues of
12 the election probably are.

13 Don't misunderstand what I'm saying. I'm not
14 suggesting the First Amendment is some minor thing off to
15 the side. It's huge. It's of tremendous importance. But
16 as Mr. Sokolove himself said on the stand, he would prefer
17 to be campaigning today. That would be for the best all the
18 way around is if you folks were focusing on the election and
19 not on your signage.

20 So please speak to each other and work out what
21 you can work out in the meantime, leaving aside what I think
22 is absolutely the case, noticing the tone of the language
23 and body language and things like that in the courtroom,
24 that there has been some heightened emotion associated with
25 litigation.

1 So you know what? Whether folks have
2 disagreements about the way the ordinance is written or the
3 way it's been applied, I think everybody here, it's safe to
4 say, that has appeared before me has the best interest of
5 the City of Rehoboth at heart, cares about the City of
6 Rehoboth, wants the City to have the opportunity to have a
7 good, clean, fair, open election. That is a broad,
8 wonderful common ground that you people should be working on
9 before you hear back from me to get things worked out about
10 these signs to a very large degree. I encourage you to do
11 that.

12 MR. SPEAKMAN: Your Honor, would you like a
13 report? A status report?

14 THE COURT: Well, I'd love a status report.
15 It's not going to hold me up. I'm going to be working on
16 your case. But you guys ought to be talking. All right?
17 We're in recess.

18 (Hearing ends at 2:37 p.m.)

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21 ROBERT D. SOKOLOVE

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